

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JAMES EZELL, III,)
)
Plaintiff,)
)
v.) Case No. CIV-23-608-D
)
DAVID COLE, *et al.*,)
)
Defendants.)

ORDER

Plaintiff James Ezell, III, a state prisoner, brought this civil rights action under 42 U.S.C. § 1983 against the following Defendants: (1) LCF Warden David Cole; (2) LCF official Mr. Russell; (3) LCF Lt. Mr. Rogers; (4) LCF Lt. Ms. Cooper; (5) LCF official Mr. Brandon; (6) LCF Unit Manager Mr. West; (7) LCF Unit Manager Ms. Marti; (8) LCF official Bonnie Green; (9) DOC Director Steven Harpe; (10) DOC Director Designee Mark Knutson; (11) Great Plains Correctional Center (“GPCC”) Warden Rick Whitten; and (12) O.I.G. agent of GPCC John Doe. This matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B) and (C).

On November 29, 2023, Judge Erwin issued a Report and Recommendation, where he recommended that the Court: “(1) dismiss the claims against Defendants Cole, Russell, Cooper, Brandon, Marti, Green, Harpe, Knutson, Whitten, and Doe without prejudice, for failure to state a claim upon which relief may be granted; (2) conclude that Plaintiff has

stated a First Amendment retaliation claim against Defendants Rogers and West; and (3) deny Plaintiff's request for a preliminary injunction." *See* Rep. and Rec. [Doc. No. 30].

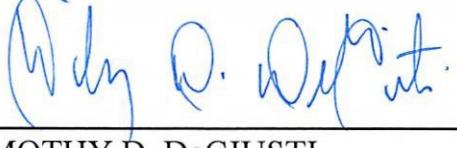
Plaintiff timely filed an Objection [Doc. No. 33]. In his Objection, Plaintiff presents no persuasive argument or authority that would cause this Court to reject Judge Erwin's conclusions. To the extent Plaintiff attempts to introduce new arguments in his Objection, the Court notes that "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996).

The Court has reviewed the entirety of the Report and Recommendation, as well as the case record, and fully concurs in the Report and Recommendation. Therefore, the Court, having conducted a *de novo* review, finds that Plaintiff's Objection should be overruled, and hereby adopts the Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that: (1) Plaintiff's claims against Defendants Cole, Russell, Cooper, Brandon, Marti, Green, Harpe, Knutson, Whitten, and Doe are dismissed without prejudice, for failure to state a claim upon which relief may be granted; and (2) Plaintiff's request for a preliminary injunction [Doc. No. 19] is denied.

IT IS FURTHER ORDERED that Plaintiff has stated a First Amendment retaliation claim against Defendants Rogers and West. However, Plaintiff's claims are subject to Judge Erwin's discussion in the Report and Recommendation, in which he notes that "Section 1983 plaintiffs may sue individual-capacity defendants only for money damages and official-capacity defendants only for injunctive relief. *Brown v. Montoya*, 662 F.3d at 1161 n.5 (10th Cir. 2011)." Rep. and Rec. at 6-7 (internal quotation marks omitted).

IT IS SO ORDERED this 18th day of January, 2024.



TIMOTHY D. DeGIUSTI
Chief United States District Judge